IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

WP(C).No. 4649 of 2006(C)

PETITIONER:

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1. ACHUTHAKURUP, S/O.PARAMESWARAN NAIR,
AGED 78 YEARS, SREEVALSAM, T.C.20/585 (OLD),
T.C.48/581, HOUSE NO. E-54, SASTHRI NAGAR,
EAST KARAMANA, THIRUVANANTHAPURAM.

2. SARASWATHI AMMA, AGED 74 YEARS,
W/O.ACHUTHAKURUP, SREEVALSAM, T.C.48/581,
HOUSE NO.E-54, SASTHRI NAGAR, EAST KARAMANA,
THIRUVANANTHAPURAM.

BY ADV. SRI.GOPAKUMAR R.THALIYAL
SRI.N.NANDAKUMARA MENON

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

2. SECRETARY, CORPORATION OF
THIRUVANANTHAPURAM.

3. SPECIAL TAHSILDAR,
LAND ACQUISITION (GENERAL),
THIRUVANANTHAPURAM.

4. V.G.LETHA, `SARAVAN',
SOORYA GARDENS, NEDUMCADU, KARAMANA-P.O.,
THIRUVANANTHAPURAM AND WORKING AS COUNSELLOR,
CORPORATION OF THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.L.G.SURESH BABU
SRI.BIJU BALAKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/08/2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

Ext.P1: True copy of decree and judgment dated 18.6.2004 in O.S. 139/03 in the files of 2nd Addl. Munsiff's Court, Thiruvananthapuram .

Ext.P2: True copy of Gazette notification dated 6.12.2005 issued by the 3rdrespondent

Ext.P3: True copy of objection submitted by the petitioner to the District Collector and 3rd respondent on 31.12.2005.

Ext.P4: Sketch showing the lie of the property.

Ext.P5: True copy of the notice issued to the petitioner by the 3rd respondent dated 15.6.2007

//True copy//

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K.PADMANABHAN NAIR, J.

W.P.(C) No. 4649 of 2006

Dated this the 7th day of August 2007

JUDGMENT

The petitioners are owners in possession of 14 cents of land comprised in Sy. No. 2096/14 of Thirumala Village, Thiruvananthapuram. According to the petitioners on the eastern side of the property there is a public road known as Sasthri Nagar road. On the southern side there is a pathway which leads to the paddy fields which lies on the western side of the property. It was averred that the paddy fields are subsequently filled up by some persons and converted the same as building site. It was averred that there was an attempt to widen the pathway on the southern side by encroaching into the property of the petitioners. The petitioners filed O.S. 139/2003 and the suit was decreed on 18-6-2004. It was averred that thereafter land acquisition proceedings were initiated by the 3rd respondent A notification under Section 4 (1) of the L.A Act was published on 2-12-2005 In Ext.P2 it was also stated that the emergency provisions under Section 17(4) of the L.A. Act was invoked and enquiry under Section 5A was dispensed with. The petitioners filed Ext.P3 objection to the notification. According to the petitioners the same was not considered on the ground that enquiry under Section 5A was dispensed with. According to the petitioners there was no public interest or any urgency and the notification was issued with an intention to help the real estate dealers. They had also suggested an alternate pathway.

Hence this writ petition to quash Ext.P2 notification.

2. The 2nd respondent filed a statement contending that on the basis of a letter received from the ward councilor on 3-7-2003 that the matter was placed before in the Town planning committee and before the Council of the Corporation. The Council took a decision to proceed with the acquisition for the widening of the road. It was contended that on the southern side of the existing pathway there are several residential houses and if any portion on the sourthern side of the existing pathway is acquired damages will be caused to those buildings . But by the proposed acquisition no damage to the building of the petitioners will be caused. The malafides alleged are denied.

3. The 3rd respondent filed counter- affidavit contending that the District Collector , Thiruvananthpuram had received the requisition for acquisition of 87.50 meters of land comprised in Survey no. 2096/14 of Thirumala Village, The purpose of acquisition is for widening of existing footpath at Sasthrinagar Karamana and the requisition authority had forwarded the documents with the decision of the council No.3F(2) dated 23-12-2003 of the Corporation Thiruvananthapuram with the requisition in form No.2. Government had ordered to acquire the land invoking urgency clause under Section 17(4) of the L.A. Act. Accordingly a combined notification under Section 4 (1) along with Section 17(4) of the Kerala Survey and Boundary Act 1961 was issued. It was averred that the Land

Revenue Commissioner had issued an order dated 20-10-2005 invoking the urgency clause under Section 17(4) of the L.A> Act. The malafides alleged are denied. The receipt of Ext.P3 objection was admitted. It was contended that no enquiry under Section 5A was conducted since the emergency clause under Section 17(4) was invoked. Hence the third respondent also prayed for the dismissal of the original petition.

4. The 4th respondent filed a separate counter- affidavit denying all the allegations levelled against her. . It was averred that the widening of the road is to connect Sasthri nagar east and west and the 50 meter development is being carried out by utilizing the Relief Fund. Except the area notified , the land necessary for widening of the remaining area was surrendered by the respective owners of the properties.

5. The normal procedure is to follow a summary of enquiry under Section 5A of the Land Acquisition Act . In **Narayan Govind Gavate etc. Vs. State of Maharashtra and others AIR 1977 SC 183** it was held that Section 17(4) cannot be read in isolation from Sections 4(1) and 5A of the Act. In **Union of India Vs. Mukesh Hans (2004) 8 SCC 14** it was held that Section 5A enquiry can be dispensed with only after the appropriate Government forms an opinion that along with the existence of urgency under Section 17(1) or unforeseen emergency under Section 17 (2), there was also a need to dispense with Section 5-A inquiry . It was also held that mere existence of such urgency or unforeseen emergency

not by itself sufficient. It was further held that the limited right of an owner/ person interested under Section 5A to object to the acquisition proceedings is not an empty formality but is a substantive right which can be taken away only for good and valid reason and within the limitations prescribed under Section 17(4).

6. In this case apart from making the statement that the Government had ordered to invoke the emergency clause no reason whatsoever is stated. I find no justification in invoking 17(4) of the Land Acquisition Act. So that part of the notification alone is liable to be quashed. The Land Acquisition Officer is directed to consider the objection filed by the petitioners as evidenced by Ext.P3 and conduct an enquiry as contemplated under Section 5A with due notice to the petitioners and requisitioning authority and take a decision This writ petition is disposed of in the above terms.

I make it very clear that I am not expressing any opinion regarding the genuineness of the need projected by the respondeonts and also the malafides alleged against them in this proceedings. Section 5A enquiry shall be conducted as expeditiously as possible at any rate within two months from the date of receipt of a copy of the judgment.

K.PADMANABHAN NAIR,JUDGE

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